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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 09-50026 (REG)

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In the Matter of:

MOTORS LIQUIDATION COMPANY, et al.
f/k/a General Motors Corporation, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

June 22, 2011
9:52 AM

B E F O R E:
HON. ROBERT E. GERBER
U.S. BANKRUPTCY JUDGE

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2 HEARING re Debtors' 151st Omnibus Objection to Claims
3 (Claims For Equity Interests)

4

5 HEARING re Debtors' 153rd Omnibus Objection to Claims
6 (Claims For Equity Interests)

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8 HEARING re Debtors' 155th Omnibus Objection to Claims
9 (Claims For Equity Interests)

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11 HEARING re Debtors' 156th Omnibus Objection to Claims
12 (Claims For Equity Interests)

13

14 HEARING re Debtors' 179th Omnibus Objection to Claims
15 (Welfare Benefits Claims of Retired and Former Salaried and
16 Executive Employees)

17

18 HEARING re Debtors' 210th Omnibus Objection to Claims
19 (Claims For Equity Interests)

20

21 HEARING re Motions filed by Billy Kidwell

22

23 HEARING re 221st Omnibus Objection to Claims
24 (Claims For Equity Interests)

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HEARING re 222nd Omnibus Objection to Claims
(Duplicate Debt Claims)

HEARING re 223rd Omnibus Objection to Claims
(Eurobond Deutsche Debt Claims)

HEARING re 224th Omnibus Objection to Claims
(No Liability GMAC Debt Claims)

HEARING re 225th Omnibus Objection to Claims
(Welfare Benefits Claims of Retired and Former Salaried and
Executive Employees)

HEARING re 226th Omnibus Objection to Claims
(Welfare Benefits Claims of Retired and Former Salaried and
Executive Employees)

HEARING re 227th Omnibus Objection to Claims
(Welfare Benefits Claims of Retired and Former Salaried and
Executive Employees)

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HEARING re 228th Omnibus Objection to Claims
(Qualified Defined Benefits Pension Benefits Claims and Welfare
Benefits Claims of Former Salaried, Executive or Hourly
Employees)

HEARING re 229th Omnibus Objection to Claims
(Supplemental Benefits Claims of Retired and Former Salaried
and Executive Employees)

HEARING re 230th Omnibus Objection to Claims
(Splinter Union Employee Claims Assumed by General Motors LLC)

HEARING re 231st Omnibus Objection to Claims
(Qualified Defined Benefits Pension Benefits Claims of Former
and Salaried and Hourly Employees)

HEARING re 232nd Omnibus Objection to Claims
(Claims Relating to Former Employees Represented by United Auto
Workers)

HEARING re 233rd Omnibus Objection to Claims
(Supplemental Executive Retirement Benefits Claims of Former
Executive Employees)

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HEARING re Application by AP Services, LLC as Crisis Mangers to
the Debtors for Approval of Discretionary Fees

HEARING re Motors Liquidation Company GUC Trusts' Objection to
Claim No. 10038 for Failure to Comply with Amended Order
Pursuant to 11 U.S.C. Section 105(A) AND General Order M-390
Authorizing Implementation of Alternate Dispute Procedures,
Including Mandatory Mediation

HEARING re Motion for Objection to Claim(s) Number 39218,
39219, 39220, 39221 and 39222 for Failure to Comply with
Amended Order Pursuant to 11 U.S.C. Section 105(A) AND General
Order M-390 Authorizing Implementation of Alternate Dispute
Procedures, Including Mandatory Mediation

HEARING re Motion for Relief from Stay filed by Steven R.
Montgomery on behalf of The Roman Catholic Diocese of
Pittsburgh and Transfiguration Parish

HEARING re Motion to Approve Compromise Under Environmental
Laws of NRD Consent Decree filed by David S. Jones on behalf of
the United States of America

Transcribed by: Linda Ferrara

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7
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10 MARK F. HASSON, III, In Propria Persona

11 DAVID McKINNEY, In Propria Persona

12 RUTH MEYER, In Propria Persona

13 LARRY P. SCHRAMM, In Propria Persona

14 TERRIE SIZEMORE, In Propria Persona

15 KATHRYN J. SLADE, In Propria Persona

16 EDMOND STERNIAK, Pro Se

17 RONALD TANCIAR, In Propria Persona

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P R O C E E D I N G S

THE COURT: Have seats, please. Okay. We're here on General Motors, Motors Liquidation Corporation. I did get some last minute requests for continuances or at least one. The debtor can tell me whether it has a problem with that request. I would like to take Mr. Kidwell's issues last and just before them, the medical benefits terminations issues and deal with preliminaries first if we can.

Mr. Smolinsky, are you going to take the lead on behalf of the GM estate -- all of GM estate?

MR. SMOLINSKY: Good morning, Your Honor. Joseph Smolinsky of Weil Gotshal & Manges for the debtors and post-effective date debtors, as well as the Motors Liquidation Company, GUC Trust. Your Honor, I'm happy to go through the agenda as its currently constructed.

With respect to the letter that I believe is the one you're referring to from Sharon Bell requesting a continuance, that was a letter that hit the docket this morning. We have several claims matters that are on this morning that have been carried on the calendar for quite some time. And we recently filed replies in our efforts to start moving forward with those lingering objections.

Given the lapse of time, we didn't want to surprise anyone with a hearing, so we went out to each and every one of the claimants that we filed responses with respect to and gave

1 them the option of either going forward today or adjourning it
2 to July 27. The default, if they did not respond, was to kick
3 that hearing. So as far as I know, Sharon Bell is not on the
4 calendar today. It's on the calendar for July 27 and we will
5 notify --

6 THE COURT: So in substance, she got what she wanted.

7 MR. SMOLINSKY: That's right, Your Honor.

8 THE COURT: Okay.

9 MR. SMOLINSKY: So each of those matters that are on
10 the calendar today, they have asked to be heard today.

11 THE COURT: Okay.

12 MR. SMOLINSKY: Your Honor, just a case update. Your
13 Honor may have heard that recently Barry Seidel and Eric Fisher
14 left the firm of Butzel Long and moved to Dickstein Shapiro.
15 And I trust that you'll be receiving substitution of counsel
16 papers with respect to that move of the two matters that they
17 were involved in.

18 THE COURT: I had not heard that. In other words,
19 the same lawyers will be continuing to act on behalf of the
20 creditors committee but for -- out of a different law firm?

21 MR. SMOLINSKY: That's correct, Your Honor. In
22 connection with that move or as part of that move, we have also
23 decided the GUC Trust to bring in Dickstein Shapiro as a co-
24 counsel to create some efficiencies in the claims objection
25 process. And in the court today is Stefanie Greer, a partner

1 at Dickstein Shapiro who will be very active in several of the
2 claims matters going forward.

3 THE COURT: Okay. Welcome, Ms. Greer.

4 MR. SMOLINSKY: Your Honor, the first matter on the
5 calendar today is the Terrie Sizemore matter. That was
6 adjourned. We notified chambers of that adjournment. Matters
7 two through six are omnibus objections to claims that all
8 relate to claims by equity holders who have asserted claims for
9 damages for a variety of reasons.

10 The first one on the calendar is the debtors' 151st
11 omnibus objection. We're going to address the Hasson response
12 today. Many of my comments with respect to Mr. Hasson's
13 response are equally applicable to the other similar matters on
14 the calendar. Mr. Hasson alleges fraud and misrepresentation
15 to equity holders, basically alleging that GM didn't advise
16 equity holders of the precarious financial condition that led
17 to its ultimate bankruptcy and assert claims for damages
18 relating to that misrepresentation.

19 Mr. Hasson doesn't assert any specific
20 misrepresentations to him but rather arguably
21 misrepresentations to the entire equity community. In any
22 event, Your Honor, Section 510(b) is clear and under Section
23 510(b) damages that arise from the sale or purchase of a
24 security are subordinated to the claims that arise in
25 connection with those securities.

1 But there's a specific section dealing with equity
2 and I just want to read and paraphrase Section 510(b) because I
3 think it's very important to the resolution of these matters.
4 510(b) says, Your Honor, "For the purpose of distribution under
5 this title, a claim arising for damages arising from the
6 purchase or sale of a security or for reimbursement or
7 contribution allowed under Section 502 on account of such claim
8 shall be subordinated to all claims or interest that are senior
9 to or equal, the claim or interest represented by such
10 security," and this is the important part, "except that if such
11 security is common stock, such claim has the same priority as
12 common stock."

13 So, Your Honor, if Mr. Hasson has a claim for damages
14 arising from the purchase or sale of common stock, then his
15 claim would be equal to that of other equity holders. Our
16 confirmed Chapter 11 plan is consistent with the absolute
17 priority rule and requires that unsecured creditors be paid in
18 full before equity holders receive any distribution.

19 So we believe that the plan treats Mr. Hasson's claim
20 consistent with those requirements and believe that Mr.
21 Hasson's claim should be reclassified to its proper place as an
22 equity claim.

23 THE COURT: Okay. My phone log indicates Mr. Hasson
24 having signed up for the call. Mr. Hasson, are you on the
25 phone?

1 MR. HASSON: Yes, I am.

2 THE COURT: Would you like to argue?

3 MR. HASSON: You see, I couldn't hear a thing that
4 the attorney had said. I hadn't heard one thing. It was
5 quiet. I could make a statement at this time.

6 THE COURT: I'm going --

7 MR. HASSON: Hello?

8 THE COURT: Just a minute.

9 UNIDENTIFIED FEMALE SPEAKER: Are you talking to me?

10 THE COURT: I would like quiet on the line
11 temporarily.

12 Would one of my folks turn off all of the blowers
13 that are air conditioning the courtroom.

14 MR. HASSON: Hello?

15 THE COURT: Just a minute please, Mr. Hasson. Mr.
16 Hasson, we've now turned off all of the air conditioning in the
17 courtroom. Can you hear me now?

18 MR. HASSON: I can hear you pretty good; yes.

19 THE COURT: All right. Mr. Smolinsky, what I would
20 like you to do is to summarize the points that you made that
21 were particularly focused at Mr. Hasson. You had cited a
22 section of the Bankruptcy Code. I think it's 510(b) upon which
23 GM is objecting.

24 MR. SMOLINSKY: Yes. Mr. Hasson, can you hear me
25 now?

1 THE COURT: Mr. Hasson?

2 MR. HASSON: I barely can hear him.

3 THE COURT: Pull the microphone very close to you,
4 Mr. Smolinsky.

5 MR. SMOLINSKY: Mr. Hasson, how is this?

6 MR. HASSON: That's fine.

7 MR. SMOLINSKY: Okay.

8 THE COURT: Go ahead please, Mr. Smolinsky.

9 MR. SMOLINSKY: Mr. Hasson, as I noted to the Court,
10 your allegations relate to misrepresentations that you allege
11 were made by General Motors to the equity holders community.
12 And I cited to Section 510(b) of the Bankruptcy Code which
13 states, "For the purpose of distribution under this title, a
14 claim arising from rescission of a purchase or sale of a security
15 of the debtor or of an affiliate of the debtor for damages
16 arising from the purchase or sale of such a security or the
17 reimbursement or contribution allowed under Section 502 on
18 account of such claim shall be subordinated to all claims or
19 interest that are senior to such claims," -- I'm sorry -- "that
20 are senior to or equal, the claim or interest represented by
21 such security," and note, "except that if such security is
22 common stock, such security has the same priority as common
23 stock."

24 As I stated, Your Honor, we believe that the plan --
25 the Chapter 11 plan that was confirmed in this case properly

1 prioritizes Mr. Hasson's claim as an equity claim which is
2 equal to all other claims and junior to the claims of proper
3 creditors in this case.

4 THE COURT: Okay. Mr. Hasson, I'll hear your
5 argument, if you wish.

6 MR. HASSON: First off, there's somebody breathing in
7 the phone. So, it's very --

8 THE COURT: I know. I have that problem all the
9 time. I haven't found out what causes it. I will ask Court
10 Call to mute everybody except Mr. Hasson and then after I've
11 ruled on Mr. Hasson's argument, to free up other's ability to
12 be heard. I know what you're talking about Mr. Hasson. All I
13 can say is it frustrates me also. Go ahead with your argument,
14 too please, sir.

15 MR. HASSON: Somebody else just said something.

16 THE COURT: Well I don't think they -- I didn't hear
17 that and I don't see how they could have. It must have only
18 been me speaking, Mr. Hasson.

19 MR. HASSON: Okay. You know, it's very hard again to
20 hear what he said and there's always rules and different things
21 I guess in the Bankruptcy Code, excuse me, of which I don't
22 know anything about. That's why I went to an attorney, Bononi
23 & Bononi, of Greensburg, Pennsylvania and I had them look over
24 this. And they felt, as well as I did, also that we were or I
25 was -- General Motors was wrong in what they did to me by not

1 letting us know how the company was doing when they were
2 actually in dire straits. Okay?

3 Let me -- if you don't mind, can I back up a little
4 bit on telling you about GM?

5 THE COURT: You can but I just want you to assume
6 that I've read your papers, Mr. Hasson. So you don't need to
7 repeat what you said then. I would find it most helpful if you
8 respond to Mr. Smolinsky's contention that because you were a
9 stockholder, the fact that you're claiming securities fraud
10 even if it's true, wouldn't give you any more rights than a
11 stockholder would otherwise have.

12 MR. HASSON: Well, GM didn't give us very many
13 rights, all right, as a stockholder, being a salaried person in
14 General Motors. To the point of where one day State Street
15 Bank notified us and notified myself, that they had done away
16 with our stock completely. We had nothing to say about it.
17 Okay? And it was our stock fund -- it was my pension fund,
18 okay? So State Street Bank for the benefit of General Motors
19 was just doing away with stock. You see, I used to stay with
20 GM all these years because they always came through in the end.
21 But now my hope was all gone because of what State Street Bank
22 did and General Motors -- well, they handled General Motors
23 stock. And the General Motors common stock fund was a fund
24 that was, excuse me, approximately 93.11 percent GM common
25 stock and it was 6.89 percent bonds. All right?

1 But the fact is whenever I said it was -- they
2 actually misrepresented themselves and that's what they did.
3 They misrepresented me completely -- themselves to me
4 completely, otherwise I would have gotten out of that thing
5 whenever it was twenty-five, thirty-five, forty dollars a
6 share.

7 So all your hearing is these people specifying
8 certain rules and regulations of the Bankruptcy Code but what
9 you have to do is take a look at what the people like myself
10 are -- you know, we're just a little person involved in this,
11 have gone through and what they've done to us. And I mean I
12 can't say much more except that's the way GM is. They took our
13 salary benefits away and I know they have nothing to do with
14 this hearing today, but they've done everything to the retired
15 salaried employees.

16 THE COURT: I understand.

17 MR. HASSON: I don't know what else I could say, but
18 say right in with what you want to answer his question.

19 THE COURT: Fair enough. I understand, sir. Okay.
20 Thank you.

21 MR. HASSON: You know it was my pension.

22 THE COURT: I well understand, Mr. Hasson.

23 Mr. Smolinsky, anything further?

24 MR. SMOLINSKY: No, Your Honor. We sympathize
25 obviously with all of the parties who have lost money in this

1 case but I have nothing further to add.

2 THE COURT: Okay.

3 MR. SMOLINSKY: We are bound by the requirements of
4 the Bankruptcy Code.

5 THE COURT: Okay.

6 MR. HASSON: It's very hard to Mr. Smolinsky.

7 THE COURT: Mr. Smolinsky said in substance that he
8 sympathized with you and that there were other retirees who
9 were in the same boat and he sympathized with them as well.
10 But that he was bound by the requirements of the Bankruptcy
11 Code. That isn't verbatim but that's the substance of what he
12 said.

13 MR. HASSON: So in other words, the people who had
14 faith in General Motors and stayed with General Motors are the
15 ones who get nothing from General Motors for being with them
16 all these years.

17 THE COURT: Okay. I'll speak to that in my ruling.
18 Is there any other stockholder who wants to -- I should be
19 hearing now, Mr. Smolinsky? I know you have a number of
20 stockholder objections. I don't know if any of them asked to
21 be heard orally.

22 MR. SMOLINSKY: I'm happy to quickly run through them
23 and if you want to give one ruling with respect to all --

24 THE COURT: Well, what I'd -- Mr. Hasson's argument
25 is a variant of the argument that applies to other stockholders

1 as well. Are there any other stockholders who you know of who
2 said they wanted to argue today?

3 MR. SMOLINSKY: All of them wanted to go forward
4 today. I suspect that that meant that they wanted to be heard.
5 So I would open up the floor and I'll be happy to respond to
6 anything that is different than Mr. Hasson's arguments.

7 THE COURT: Okay. Court Call would you live-in, if
8 you will or activate everybody's phone access? And I want to
9 ask if there is anybody on the phone who is in a stockholder
10 situation who has either --

11 MS. DITTMEIER: I am a stockholder.

12 THE COURT: Okay. Would you like to argue, Miss?

13 MS. DITTMEIER: Yes, my name is Domenica Dittmeier.
14 I believe I am listed today.

15 THE COURT: Yes, you are, Ms. Dittmeier. I have you
16 on my log.

17 MS. DITTMEIER: Yes, Judge, there are -- I just have
18 a few points. I'm an eighty-five year old woman of limited
19 income with a totally disabled eighty-eight year old husband
20 and even -- we lost about thirty-two thousand which I recognize
21 to some people isn't much but it is to us.

22 Now I'm seeking a partial return, whatever I can get
23 on the following basis or one of the basis that I believe
24 stockholders are creditors because the bank lends money,
25 expects to get it back with interest, he's a creditor. The

1 buyer sells, he's a creditor. The stockholders been doing
2 exactly the same thing and he shouldn't be called anything but
3 a creditor and he should have the same preference and priority
4 as all other creditors.

5 Now I have never saw my money as a gift or a charity.
6 General Motors never indicated otherwise and now they're trying
7 to establish a definition to their benefit, so that we won't
8 get anything. They want to call us equity interests. Well, we
9 are stockholders and creditors. And they think by changing the
10 definition, we can go to the very, very end of the line when
11 there's absolutely not a penny left. And I don't think they
12 should have the right to change definitions and to call us
13 anything but what is generally assumed to be a lender, a
14 creditor.

15 So on that basis, I would like to have the same
16 priorities as any other creditor and not put at the very end of
17 the line and for any other reason that Your Honor could see
18 fit, I would like whatever portion you feel I am entitled to.
19 I would very much like to have something back. And I don't
20 think that the new GM which is probably being run by the same
21 people, should profit by abandoning the old faithful ones. I
22 think we are entitled to a higher priority and I very, very
23 much like -- would like to get a little something, okay, Your
24 Honor? I hope you understand and appreciate what I'm saying.

25 THE COURT: I do. Thank you. Okay. Are there other

1 stockholders --

2 MS. DITTMEIER: Are you there?

3 THE COURT: Yes. I am here, believe me and I heard
4 everything you said, Ms. Dittmeier.

5 Are there any other stockholders who wish to be heard
6 besides Mr. Hasson and Ms. Dittmeier?

7 MR. STERNIAK: Yes, my name is Edmond Sterniak.

8 THE COURT: Your name again, please, sir.

9 MR. STERNIAK: Edmond Sterniak.

10 THE COURT: Oh, yes, Mr. Sterniak, forgive me. Okay.
11 Go ahead, please.

12 MR. STERNIAK: Okay. So like the woman just stated,
13 you know, we stayed with it to the end. We put money in it and
14 they want to just throw us out and not give us anything but
15 already the new GM, they want to turn around and give
16 themselves bonuses already.

17 I can't see -- that should be criminal for them to do
18 that. I mean they're taking from us. They knew they were in
19 trouble. We still stayed with them because we've always
20 been with them. I still drive General Motor vehicles.

21 We stay with them to the end. We show our faith. I
22 mean we do everything possible and they're just going to throw
23 us out like nothing, like we're not even there? And they're
24 giving themselves bonuses again already. You know, what's to
25 stop them to keep from doing this and doing this over and over

1 again? It's just not right. Like Mrs. Dittmeier said, I think
2 we should be given first priority of getting something back,
3 sir.

4 THE COURT: Fair enough, Mr. Sterniak. Thank you.
5 Other folks who I haven't given a chance to --

6 MR. STERNIAK: And I guess, you know, I'll leave it
7 at that, I guess. I just, you know, hopefully you can see
8 through this and, you know, award us a little something, anyway
9 because even myself, I lost less than Mrs. Dittmeier but, you
10 know, I spent what I lost -- you know, it was twenty years of
11 savings that I lost.

12 THE COURT: I understand, sir.

13 MR. STERNIAK: And I guess that's about all I have to
14 say, sir.

15 THE COURT: Very well. Thank you. Anybody who is in
16 the stockholder category who I haven't given a chance to be
17 heard yet?

18 MR. TANCAR: Yes, Your Honor. This is Ron Tanciar.
19 I would like to say a few words if I may.

20 THE COURT: Yes, you may, Mr. Tanciar.

21 MR. TANCAR: Judge Gerber, just a couple of points.
22 First of all, I agree with everything that has been said and
23 you have my letter in front of you. I was kind of led to
24 believe that GM was going to go out with -- and do what Stemple
25 did in the early nineties when this country went through a

1 recess and that was to go out and raise money from our
2 financial institutions across this nation and also issue new
3 stock.

4 Well, unfortunately, that didn't transpire and being
5 a GM retiree who spent over thirty years with the company, I
6 was hoping that with good faith with the company and with loyal
7 employees, such that they would come through and at least award
8 us with the new stock that they issued.

9 And if my letter is in front of you, Your Honor, I
10 did attach an article and the top of article says top GM
11 executives received billions in stock prior to the IPO. So
12 once again, you know, the big boys on the top, you know, try to
13 run the company, do the right things, well they always have
14 their pockets out first. And I would appreciate if the Court
15 would listen to our grievances and hopefully you'll award the
16 Court leave to -- at least maybe give us a portion of some of
17 the new stock that has been issued. And that's about all I
18 have to say, Your Honor.

19 THE COURT: Okay. Thank you. All right. Anybody
20 else?

21 MR. SMOLINSKY: Your Honor, just -- Joe Smolinsky
22 again. Just two points; the first point for the record, just
23 to respond to that last comment, obviously as this court knows,
24 new GM, the one that just had its IPO and went public is not
25 under the watch of this court. It is a separate company from

1 General Motors Corporation, now Motors Liquidation Company.

2 MR. TANCIAR: I understand that but the way I read
3 this was that the executives prior to the new stock being
4 issued, they were able to receive the stock. Now if they were
5 employed under the new GM, that I can't tell you.

6 THE COURT: Okay.

7 MR. SMOLINSKY: The second point I just want to
8 highlight, just responding to Ms. Dittmeier, I know she's
9 unfamiliar with the term equity or equity interests. If Your
10 Honor would like, I'd just --

11 THE COURT: Yes. No, you're going to say that equity
12 interest is the word of art that's used in the Bankruptcy Code
13 that covers stock.

14 MR. SMOLINSKY: It's actually defined, Your Honor, in
15 Section 101.16 of the Code which says, "The term equity
16 interest means (a) share in a corporation, whether or not
17 transferrable or denominated stock or similar security." And
18 that's what -- that's the definition that moves into the
19 priority scheme elsewhere in the Code.

20 THE COURT: Okay. Everybody standby for a minute,
21 please.

22 (Pause.)

23 THE COURT: I am now going to rule but before I do, I
24 want to say that there have been many, many things in the GM
25 bankruptcy case that have saddened me and the realities of what

1 the law requires in this situation is one of them. Many, many
2 employees have lost their jobs. Many, many creditors are
3 getting only portions of what they're owed. Maybe if we're
4 lucky, some of them will get thirty cents. That's still a loss
5 for very many people.

6 I have had people coming in in wheelchairs who were
7 victims of car wrecks who will be getting only small portions
8 of what a jury might otherwise award them. And here we have
9 three people who have spoken but who are only a small portion
10 of what I suspect are tens of thousands of stockholders who
11 have found that stock that they got, in many cases as part of
12 their pension plans, turned out to be worthless when GM had the
13 financial difficulties it did.

14 On this motion, I have old GM's motion to disallow
15 claims by stockholders who were seeking the treatment that
16 creditors get and to which Mr. Smolinsky said, and I understood
17 both halves of what he said, that he had great sympathy but
18 that he was required by law to follow the law. And
19 unfortunately, I am in the same situation.

20 Although this issue is not hard from a viewpoint of
21 bankruptcy law, the principles aren't as well known to people
22 who aren't lawyers, even educated people. So I'm going to take
23 a couple of minutes to layout the basis for my ruling which is
24 unfortunately, that I am going to have to disallow these
25 claims.

1 American bankruptcy law, and as far as I know, the
2 bankruptcy law of every other country, as well, dishes out
3 whatever a company has available to satisfy claims against it
4 in the order of priorities. After certain special priorities
5 are taken care of, most significantly for certain types of
6 employee wages and taxes and a few other things, creditors then
7 share based upon their claims, but the creditors must be paid
8 in full before the next level which is stock can get paid.
9 This is a slight oversimplification because sometimes there are
10 different levels of priority among creditors and sometimes
11 there are different levels of priority among stockholders.

12 Ms. Dittmeier commented on one of the obscure words
13 of art that's used in bankruptcy. She said what are you
14 talking about, equity interests? I'm a stockholder. That's a
15 paraphrase of what she said but that's in substance the point
16 she was making. And the answer is the one that Mr. Smolinsky,
17 the lawyer for old GM said in his reply which is that equity
18 interest is the word of art that bankruptcy uses to describe
19 certain types of ownership of the company that are different
20 from creditor claims, the most significant example of that
21 being common stock which is what most of GM's equity holders
22 had. Putting it another way, which is what most of GM's
23 stockholders had.

24 Because the American system, for lack of a better
25 word, says that you've got to pay creditors first, stockholders

1 can't be given anything out of the assets of an insolvent
2 company like GM until the needs and concerns of the credits
3 have been satisfied. And although I don't know the exact
4 figures, I'm going to use a number by way of example. It looks
5 like the creditors may be getting perhaps thirty cents in value
6 on their claims on a dollar's claim which means they're going
7 to lose seventy percent of their claims. And because of that,
8 I'm not in a position to allow claims on behalf of stockholders
9 because the creditors who are higher than they are in the order
10 of priorities haven't been paid in full.

11 Now, Mr. Hasson raised a variant of that. Mr. Hasson
12 didn't ask for payment as a stockholder alone but he said that
13 GM owes him as a creditor rather than as a stockholder, because
14 GM was guilty of what I'll call in shorthand, securities fraud,
15 for failing to tell him all of the facts concerning General
16 Motors Financial condition.

17 Assuming for the purposes of the analysis that GM was
18 not fully truthful or fully disclosing its financial condition
19 to its stockholder community and I don't make that finding but
20 I simply assume it for the purpose of the analysis, the
21 Bankruptcy Code has a special provision that deals with that
22 and it's called 510(b). And it arises because for better or
23 worse, securities fraud is fairly common in the cases that we
24 bankruptcy judges see. And that if you could get a double
25 recovery, once on your debt and a second time for the

1 securities fraud, you'd get a leg up over creditors if you were
2 defrauded when you bought a debt security, like a bond or a
3 note.

4 Under the same principle, if a stockholder who would
5 normally have to get paid only after the creditors were paid in
6 full, could in essence bootstrap that into a creditor claim,
7 that stockholder would be getting a leg up over other
8 stockholders who might have been subject to the same
9 information and in any event, it would be a way of getting
10 around the normal requirements of the Bankruptcy Code. And
11 that's the reason why Congress in 1979 put in this provision,
12 510(b) which Mr. Smolinsky read at the beginning of the
13 argument which is in substance, an anti-bootstrapping
14 provision.

15 So folks, you've got to believe me when I say I know
16 how you feel but as a matter of law, I just can't help you.
17 Stockholders can't get paid until creditors have been paid and
18 I have thousands of creditors who haven't been paid in full.
19 In some cases, their personal circumstances, and I'm thinking
20 especially of some of the car wreck victims but I'm sure there
21 are many who put their life savings in bonds rather than stock,
22 who suffered the same kinds of injury.

23 There are limits to how much I can help the people
24 who invested in GM. And as a person who is sworn under the
25 Constitution to comply with the law, I've got to apply the law.

1 So I'll say one more time, I really do understand your
2 circumstances and I feel for you but under the law, my hands
3 are tied.

4 MS. DITTMEIER: But I understand that you've already
5 ruled --

6 THE COURT: And forgive me, I must continue. And for
7 those reasons, the debtors' objections to these claims are
8 sustained. Mr. Smolinsky, you are to settle an order in
9 accordance with this oral ruling at your earliest reasonable
10 convenience.

11 I want you to triple the normal time that you give
12 notice of settlement. Give the folks three weeks. You can use
13 mail for that. The time to appeal my decision is going to run
14 from the time of the entry of the order and not from the time
15 that I've just dictated this decision and not from today.

16 MR. SMOLINSKY: Thank you, Your Honor. We will.

17 THE COURT: Okay. What's the next matter on the
18 calendar?

19 MR. SMOLINSKY: The next matter on the calendar, it's
20 item 7 on the contested agenda is omnibus claims motion number
21 179. There are two remaining claims under this objection.
22 The first is Kathryn Slade and the second is Larry Schramm.

23 This is one of a number of claims filed against the
24 estate seeking damage for prepetition loss of retiree benefits,
25 particularly healthcare and life insurance benefits.

1 MS. SLADE: Hello?

2 THE COURT: Hello?

3 MS. SLADE: The microphone went blank.

4 THE COURT: All right. Mr. Smolinsky --

5 MR. SMOLINSKY: Should I try this one?

6 THE COURT: Yes, why don't you take that microphone
7 from the counsel table and I want you to do exactly what you're
8 doing now, lift it up and hold it Oprah Winfrey style, just
9 keep that thing close to your mouth and see if they can hear
10 you better that way.

11 MR. SMOLINSKY: Let me try, Your Honor. Hopefully
12 this will work better.

13 THE COURT: Let me ask you to pause for a second, Mr.
14 Smolinsky. Could the folks on the phone hear him when he said
15 "Let me try it now, Your Honor?"

16 UNIDENTIFIED MALE SPEAKER: Yes, we could hear him.

17 THE COURT: Okay. Thank you. Go ahead, Mr.
18 Smolinsky.

19 MR. SMOLINSKY: Thank you, Your Honor. So this is
20 the 179th omnibus objecting to claims of Kathryn Slade and
21 Larry Schramm.

22 UNIDENTIFIED MALE SPEAKER: Hello? I cannot hear.

23 MS. SLADE: Hello. This is Kathryn.

24 THE COURT: Mr. Smolinsky, do the best you can but
25 forgive me folks, I can't just end my hearing because of

1 problems on the phone. I'm going to ask the lawyer to hold the
2 microphone very close to his mouth but I have to move on with
3 the hearing. Go ahead, Mr. Smolinsky.

4 MR. SMOLINSKY: Your Honor, prior to the petition
5 date, General Motors Corporation modified certain of its
6 benefit plans to reduce the cost of the benefits they're under.
7 Subsequent to those modifications, the debtors after filing the
8 bankruptcy entered into the master sale and asset purchase
9 agreement, under which new GM, a newly formed company, agreed
10 to assume those benefit plans as had previously been modified.

11 Your Honor, over the course of time, the General
12 Motors Corporation benefit plans have been periodically
13 modified and reduced. This is not the first time. Under
14 ERISA, ERISA clearly holds that only vested benefits can't be
15 changed. And the assumption is that these types of benefit
16 plans, healthcare and life insurance benefit plans, are not
17 vested unless there's a very strong statement indicating that
18 there is an intent to treat those benefits as vested. In other
19 words, not able to be changed.

20 To the contrary, Your Honor, each and every one of
21 the General Motors Corporation plans provide clearly that
22 they're subject to amendment or termination at any time in the
23 company's discretion. That language which is cited in our
24 papers also appears in virtually all of the various documents
25 which the human resources department at General Motors

1 Corporation uses in their day-to-day activities.

2 Several courts, many courts, have confirmed that
3 these types of plans are unvested and can be modified or
4 terminated. The Sprague case, Sprague v. General Motors
5 Corporation, that's a sixth circuit case, Moore v. Metro Life
6 Insurance Company which is a second circuit case, those cases
7 all hold that there needs to be a very strong statement that
8 claims of these types of benefits, are vested in order to
9 prohibit the company from being able to modify and terminate
10 those plans when they need to.

11 So, Your Honor, we have two remaining objections for
12 the 179th omnibus; Larry Schramm and Kathryn Slade. Both of
13 them are long term -- long time employees of General Motors
14 Corporation. Both are retirees.

15 Mr. Schramm concedes in his papers that General
16 Motors Corporation reserved its rights to modify benefit plans,
17 yet argues that for equitable reasons, they should not be
18 allowed to modify those benefits because he wouldn't have
19 retired had he known that those benefits were subject to
20 change.

21 Kathryn Slade and, Your Honor, I believe she filed a
22 supplemental response this morning, I don't know if Your Honor
23 has it, we can hand it up if you don't.

24 THE COURT: I think I did, Mr. Smolinsky but I may
25 have left it in my chambers. Go ahead.

1 MR. SMOLINSKY: We can hand up a copy, Your Honor.
2 Ms. Slade similarly argues that her benefits should not be
3 modified. She is continuing to get benefits as is Mr. Schramm
4 from new GM although in the --

5 THE COURT: But in the lesser amount --

6 MR. SMOLINSKY: -- lesser --

7 THE COURT: -- after the modification.

8 MR. SMOLINSKY: That's correct, Your Honor. So
9 again, Your Honor, we sympathize with all of the retirees,
10 employees, stockholders, but we are constrained. This is a
11 liquidating estate. These benefits were properly modified.
12 New GM agreed to assume those benefits that existed at the time
13 of the bankruptcy. And we are constrained and have no ability
14 to honor claims for damages resulting from a loss of those
15 benefits.

16 THE COURT: Okay. Thank you. Ms. Slade, my log
17 shows that you may have signed up for the call. Are you on?

18 MS. SLADE: I am on. Can you hear me?

19 THE COURT: yes, I hear you pretty well. Would you
20 like to argue?

21 MS. SLADE: Well, Judge Gerber, my only argument is
22 very similar to one of the earlier one around the stockholders
23 claims. GM hourly and salaried management, as I gotten my
24 statement this morning, have been taking these huge bonuses.
25 GM old or new, it's all the same company in my opinion. They

1 are taking from the salaried retirees great amounts of money,
2 at the same time profiting from our hardships and our
3 sacrifices.

4 The only thing I guess I would really like to point
5 out was the same as what Mr. Henderson said in his letter to
6 the GM retirees back in June of '09.

7 THE COURT: You're talking about Fritz Henderson, the
8 former CEO of the company?

9 MS. SLADE: Yes. But what he said was to continue to
10 support GM and -- or we're going to have to sacrifice. Well,
11 we will always continue to sacrifice as GM retiree in our
12 medical and in our insurance. And we're still going to
13 continue to sacrifice and the upper management scrapes in great
14 heaps of money. I guess there's such an unfairness when you
15 see what I put in and Larry put in thirty something years, all
16 these other folks that have dedicated a life to a company who
17 is still making profits and seriously, riding on some of the
18 hard work that we performed and we're just being chucked by the
19 wayside.

20 Sir, I understand you have to follow the letter of
21 the law and if that's the way it goes, I understand, I accept
22 that. I just appreciate being heard as a GM employee and as a
23 fellow human being. That's all.

24 THE COURT: Okay. Thanks. Mr. Smolinsky, I made a
25 note in my note --

1 MS. SLADE: Is anyone there?

2 THE COURT: Yes. The last thing I said was thank
3 you, Ms. Slade or words to that effect. And then I was about
4 to ask Mr. Smolinsky, the lawyer for old GM the name of the
5 other person who is similarly situated which I didn't put in my
6 notes. I want to ask if he wants to be heard on the phone
7 also.

8 MR. SMOLINSKY: That's Mr. Schramm, Larry Schramm.

9 THE COURT: Okay. Mr. Larry Schramm, are you on the
10 line?

11 MR. SCHRAMM: Judge Gerber, this is Larry Schramm.

12 THE COURT: Would you like to be heard in argument
13 also?

14 MR. SCHRAMM: Please, if I could. I have just a
15 couple of points I'd like to make.

16 THE COURT: Sure. Go ahead, sir.

17 MR. SCHRAMM: Even though they said during an earlier
18 discussion, that ERISA does not provide for anything other than
19 the pension part of it or the other welfare benefits as they
20 call it. For my thirty-six, thirty-seven years at GM, over
21 half of that time, there were no exclusions that I was aware of
22 in the retirement package that GM put out almost every year to
23 salaried employees, a total compensation statement. And
24 included in that was figured in the retirement benefit that I
25 was getting. That I'd be working for less money on a current

1 benefit to accrue some sort of benefit after I retire.

2 And that, along with what I was -- and the retirement
3 that I took was based on, predicated on getting some sort of
4 welfare benefit, you know, some of my other medical expenses
5 and things paid for in retirement. And I early retired and it
6 got changed. I have a hard -- it's hard for me to believe that
7 the retirement was not the -- they knew what they were going to
8 do prior to having you retired. And the termination systems
9 (sic) that came into that, because I was notified by the
10 program that I -- because of what happened, I was actually --
11 you know was not necessarily a voluntary retirement and by
12 definition of the termination systems (sic).

13 THE COURT: Pause please, Mr. Schramm. GM's response
14 says in substance that the disclosures to its employees all
15 provided that there was an express disclosure of the fact that
16 the plan could be modified or terminated by the employer and
17 they said in their reply, and I'm looking at page 4 of their
18 reply, that you don't dispute their right to amend or terminate
19 in accordance with the terms. And then they go on to say but
20 you're further arguing that because you retired, it shouldn't
21 be subject to being changed after that.

22 Did your -- is it agreed on your part that your
23 paperwork did have that right to modify or terminate or do you
24 have some different document you want to show me?

25 MR. SCHRAMM: No. The -- I guess the question I have

1 is was there a reason so they could get the retirement, so that
2 would be able to at that point in time change knowing -- did
3 they know at the time of my retirement that they were going to
4 make a change at that point, and find -- that's after I
5 retired.

6 THE COURT: When did you retire, sir?

7 MR. SCHRAMM: October 2008.

8 THE COURT: 2008.

9 MR. SCHRAMM: Yes.

10 THE COURT: Was there any paperwork that you signed
11 when you retired that changed what they said about the right to
12 modify or terminate that had been in place before you retired?

13 MR. SCHRAMM: No, I had a standard retirement forms
14 to sign.

15 THE COURT: Okay. Anything else, Mr. Schramm?

16 MR. SCHRAMM: That's all. Thank you.

17 THE COURT: Thank you. Okay. Mr. Smolinsky, do you
18 wish to reply?

19 MR. SMOLINSKY: No, Your Honor. I just want to make
20 one comment for Ms. Slade's benefit. I think she wrote in her
21 reply that she was concerned about her pension and I just want
22 to make clear that there were no modifications to the pension
23 plan that was assumed by new GM. So she doesn't have to worry
24 about these procedures here modifying those benefits.

25 THE COURT: When we talk about welfare plans, we're

1 talking about retiree medical benefits?

2 MR. SMOLINSKY: Medical and life insurance.

3 THE COURT: Medical and life insurance. Okay. All
4 right. I think there were only two employees in this category,
5 am I correct or two retirees in this category?

6 MR. SMOLINSKY: On today's calendar, that's correct,
7 Your Honor.

8 THE COURT: Okay.

9 MR. SMOLINSKY: All relating to the same objection
10 which if the relief is granted, will resolve that objection.

11 THE COURT: All right. Then stand in place for a
12 second. I'm going to rule on these.

13 Folks, once more I'm in the unhappy position of
14 having to comply with the law, notwithstanding the hardship
15 that my ruling will have on the two people who are affected
16 here who, in fact, may only be the most conscientious of a
17 larger group who were affected in a similar way.

18 Here, GM -- old GM modified its retiree's medical and
19 life insurance benefits. Benefits of this type are described
20 in the law as welfare plans. Before the plans as modified
21 typically by providing for lesser benefits, were then assumed
22 by new GM, which would continue to perform under them but in a
23 typically smaller way in the form of delivering benefits.

24 I do note and it's important to note as Mr. Smolinsky
25 clarified at the end, we're not talking about pensions. We're

1 talking about medical benefits which retirees normally get
2 after they retire to cover them up until the time they get
3 Medicare and sometimes to provide a supplemental benefit above
4 what you'd get under Medicare.

5 It is undisputed, and we dealt with this back in June
6 of 2009 when I got a request by some folks who were going to
7 represent retirees, asking me to form a committee to represent
8 their interest, it is undisputed that insofar as the retirees
9 we're talking about here could be affected by this, that GM,
10 now called old GM, had expressly provided in its plans and in
11 the disclosures to its employees, that it reserved the right to
12 terminate or modify their plans and its rights to do so were
13 upheld by the Sixth Circuit Court of Appeals in a case called
14 Sprague v. General Motors.

15 That reservation was part of the contract, if you
16 will, between the retiree and the employee. And while any time
17 an employee loses the benefits, even in part, that's a
18 hardship, it was part of the contract that I'm sworn to enforce
19 as a judge.

20 Now it is some, but not total consolation that new GM
21 agreed as part of its purchase agreement, to take on the
22 remaining medical benefits in their modified form. But sadly,
23 I'm not allowed to look at the hardship on any particular
24 employee. I've just got to determine what are the rights of
25 the parties because I have a responsibility not just to the

1 folks who were objecting, but to all of GM's other creditors,
2 as well.

3 And there is only so much in the way of available
4 value, if you will, to distribute to the entirety of old
5 General Motors creditor community.

6 By the same token, it's clear that the undertaking
7 that new GM took on was to take the welfare benefits only in
8 their modified form which insofar as I'm aware is in every
9 case, providing less in the way of benefits for the retiree
10 than it used to provide.

11 Now Mr. Schramm makes a slight variant of the
12 argument. He says that he wouldn't have retired if he thought
13 that GM was going to do that to him. And he says that he
14 thinks there was an intention to take away his benefits when he
15 retired at the end of 2008 and that wasn't disclosed to him.

16 There has been no allegation, nor proof, that GM lied
17 to him in that regard. At most, I have an argument that there
18 just wasn't a disclosure of that type. However, given the
19 rights that were reserved under the plan, I'm not in a position
20 to find that that provides an exception to the general rule.

21 So for the same, in some ways, reasons as we had
22 before, which is ultimately that I'm bound to comply with the
23 law and notwithstanding its hardship on particular affected
24 retirees, I must sustain the objection.

25 But Mr. Smolinsky, with the same procedural

1 requirements that I imposed on the stockholders, I want you to
2 triple the amount of notice you're giving before you enter the
3 order and I want to say in baby talk, say explicitly that the
4 time to appeal does not run from today. It will run from the
5 time of entry of the order.

6 Ms. Slade, Mr. Schramm, I want to note for you and
7 also for the stockholders if they're still on the phone, that
8 the time to appeal from a decision of a bankruptcy court is
9 much shorter than the time to appeal from an order of a
10 district court. You've only got fourteen days. So just keep
11 that in mind if you do decide that you want to appeal.

12 Mr. Smolinsky, what's your next matter?

13 MR. SMOLINSKY: Thank you, sir. I believe the next
14 matters relate to Billy Ray Kidwell which I think you indicated
15 you wanted to hold to the end of the hearing; is that correct,
16 Your Honor?

17 THE COURT: Yes, I don't see Mr. Kidwell on my call
18 in log. And I don't see anybody who I would think might be Mr.
19 Kidwell in the courtroom. Mr. Kidwell, are you on the phone?

20 (No response.)

21 THE COURT: No. Am I right that Mr. Kidwell isn't in
22 the courtroom?

23 (No response.)

24 THE COURT: Right again. I've read the papers, Mr.
25 Smolinsky, and am required to sustain old GM's objection and to

1 grant new GM all of the requests new GM sought, as well with
2 the exception of enjoining Mr. Kidwell from continuing his
3 litigation. What I state in the way of a ruling on the merits,
4 of course, will be stuff that either old GM or new GM could use
5 if Mr. Kidwell chooses to continue his litigation elsewhere.

6 I was originally going to dictate a decision but my
7 script, if you will, for it runs twelve pages and with him not
8 on the call, my voice starting to give out already, I don't
9 think I'm going to burden everybody with reading a twelve page
10 script now. I think instead what I'm going to do is put a
11 caption on it and just post it on ECF.

12 I guess I will hear argument by new GM as to my
13 tentative or my instinct that I don't want to be enjoining
14 litigants from raising issues. I mean the guy at least
15 seemingly has a gripe with respect to a vehicle, a truck that
16 has given him one nightmare after another. This isn't a Martin
17 Tragona (ph.) type of situation in my view. You've got a guy
18 who was upset and was trying to get his remedies and if he
19 didn't do it the right way, I'm not of a mind to enjoin him
20 from looking to the courts. I don't think he has a remedy but
21 I'm not going to enjoin him.

22 Mr. Steinberg, do you want to argue that?

23 MR. STEINBERG: Good morning, Your Honor. I'm going
24 to raise my voice, just in case someone on the phone needs to
25 hear but it's not intended to be shouting at anybody.

1 THE COURT: Hopefully not me, among others.

2 MR. STEINBERG: Your Honor, I certainly am not
3 shouting at you or anybody else. We did not move affirmatively
4 in this court but we responded to Mr. Kidwell's motions that he
5 had filed and he had filed numerous motions. The disputes with
6 Mr. Kidwell have traversed the state courts in Florida, the
7 federal district court in Florida, and now before Your Honor.
8 And there have been appeals taken from the district court
9 decision up and down to the circuit court level. I am not
10 going to try to --

11 THE COURT: The circuit court of appeals or the
12 Florida circuit court?

13 MR. STEINBERG: The circuit court of appeals. I am
14 not going to try to argue with Your Honor's ruling that he
15 should be enjoined from pursuing whatever remedy he thinks is
16 appropriate. We do believe that based on Your Honor's ruling,
17 that he should follow the appropriate procedures and we are to
18 some extent, empathetic that he's a pro se litigant and
19 therefore, he may not be fully familiar with exactly how to put
20 forth what he believes is his grievance. But I am not here
21 today to try to talk Your Honor out of your ruling on the
22 injunction.

23 THE COURT: All right. Very well. Thank you. Then
24 a written decision on Mr. Kidwell's various claims will be
25 forthcoming out of my chambers in the next couple of days.

1 MR. SMOLINSKY: Thank you, Your Honor. We now move
2 to the uncontested portion of the calendar. Your Honor, the
3 first matter is a motion by the United States of America to
4 approve a consent decree. If it's okay, I'll just handle that
5 motion and Mr. Jones could make comments if necessary.

6 Your Honor, we continue to make progress on the
7 environmental front. This consent decree is similar to ones
8 that you've approved in the past as we continue to narrow the
9 scope of the EPA's global claim filed in this case. This
10 consent decree resolves five additional sites in New York, New
11 Jersey and Indiana.

12 I believe Your Honor has actually signed an order
13 approving this motion on Friday.

14 THE COURT: You anticipated the question I was going
15 to ask to you or Mr. Jones, Mr. Smolinsky. I had been under
16 the impression, unless I am confusing the settlement and I know
17 that there have been a lot of environmental settlements, that
18 on this one which involved if I recall, the Passaic River and
19 perhaps the tribe upstate, involving the Messina plant, but I
20 may have it confused with another was below the threshold for
21 which the old GM estate needed my okay, that the U.S.
22 government still needed my approval to make sure that the
23 government was acting in accordance with the public interest
24 but nobody had complained either in proceedings before the U.S.
25 government or in this court contending that the government

1 hadn't done its job and I thought that I could therefore sign
2 it without a hearing. And I think I did. Are we talking about
3 the same one?

4 MR. SMOLINSKY: Yes, Your Honor. That's correct.
5 The government lodged the consent decree for comment period
6 like it has in the past and there were no objections. And Your
7 Honor was free to sign the order, although we did schedule it
8 for today.

9 There is one more companion stipulation that's
10 referred to in the motion but wasn't attached and if I can, I
11 would just like to spend a minute walking Your Honor through
12 it.

13 THE COURT: Sure.

14 MR. SMOLINSKY: We have done this in the past. As
15 Your Honor may recall in connection with confirmation of the
16 plan, the U.S. government asked that they reserve their rights
17 with respect to setoff and the confirmation order so-provides.

18 Your Honor, may also recall that under the master
19 sale and asset purchase agreement, the debtors transferred to
20 new GM all rights to tax refunds. The issue in the stipulation
21 which will be submitted to Your Honor in the next day or so,
22 which I believe now has all of the requisite approvals, and Mr.
23 Jones can speak to that, reserves the right to setoff the
24 claims, certain portions of the claims, the 11.5 million
25 dollars which is being provided to the government in connection

1 with the settlement against tax refunds that the government
2 owns MLC and now new GM.

3 The debtors are somewhat in the middle here. The
4 debtors just want to make sure that we don't end up in a
5 situation where the government exercises a right of setoff and
6 new GM or the government then seeks to get real dollars from us
7 for violation of the master sale -- master purchase -- sale and
8 purchase agreement.

9 So what the stipulation provides is that -- and the
10 government is currently in negotiations with new GM over
11 allowing the setoff to take place. The result of the setoff,
12 if that agreement is reached, is that the claims against the
13 estate will actually be reduced at no cost to the estate. So
14 this is a benefit to the estate to the extent that the
15 government could reach agreement with new GM.

16 But those discussions are not yet complete, so what
17 the stipulation does is on account of the 11.5 million dollars
18 which is being settled today, only a portion of that will be
19 distributed today in the next quarterly distribution. The rest
20 will be held in abeyance pending a determination as to whether
21 that agreement with new GM is reached or not.

22 If an agreement is reached, the setoff will take
23 place and the GUC Trust will not be responsible for making any
24 further distributions on account of the consent decree. If
25 that agreement is not reached, then the GUC Trust would go

1 ahead and make that distribution. So I wanted to put it on the
2 record that from the GUC Trust perspective and from the Motors
3 Liquidation Company's perspective, and I'd like Mr. Jones to
4 confirm this, the impact of the stipulation is never to assert
5 claims, additional claims against the estate or the GUC Trust
6 but rather to potentially reduce the number of claims that
7 could be asserted.

8 THE COURT: Let me hear from Mr. Jones and also if
9 either wants, new GM or the GUC Trust to find out if anybody
10 has any problems with what Mr. Smolinsky said. Mr. Jones, good
11 morning.

12 MR. JONES: Thank you, Your Honor. David Jones from
13 the U.S. Attorney's Office for the government.

14 First to start with, Mr. Smolinsky's last point, that
15 is correct. His characterization of the intended stipulation
16 is correct, that serves simply for purposes of this case to
17 alter what would otherwise be the distribution of the full 11.5
18 million settled claim amount in the next distribution, so that
19 2.5 million is being held back in anticipation of a potential
20 offset recovery. There will be a distribution on account of a
21 total of nine million on these five settled claims and then
22 with the estate to simply hold back enough assets to permit an
23 eventual unsecured distribution if the offset does not
24 materialize. Otherwise, if we do achieve an offset recovery,
25 we will notify the estate and the assets tied up for what would

1 be a distribution and that 2.5 million slice would then be
2 freed up for other distributions or estate purposes.

3 As Mr. Smolinsky represented, I've been told by
4 counsel for all the signatories to the stipulation and that's
5 counsel for the state of Indiana, the state of New York, St.
6 Regis Mohawk Tribe, and MLC and the GUC Trust, that they have
7 authorizations needed to sign. I'll need a day or two to
8 actually acquire a fully executed copy and submit it. But
9 that's the -- I understand I have everyone's signoff that I
10 need.

11 If I can, Your Honor, let me just backup to where we
12 started which is that yes, the Court did enter an approval
13 order and Your Honor's description of the status of this matter
14 was absolutely correct. This is an unobjected to consent
15 decree, and I'll specify regarding natural resource damage
16 claims of the government. So these are brought federally on
17 behalf of the Department of Interior and NOAA, the National
18 Oceanic and Atmospheric Administration. These are to
19 compensate for natural resource harms caused by contamination,
20 whereas EPA claims, roughly speaking are for cleanup costs.

21 In part, these claims are brought jointly with co-
22 trustees, namely the states that I just mentioned and the tribe
23 that I just mentioned and therefore, the resolution is all
24 bundled together. I can give the Court a quick update on what
25 remains open in the environmental front with the government in

1 case that's helpful. On the natural resource damage front,
2 there's only one site remaining unresolved. That's in Onondaga
3 County, New York. We are attempting to negotiate a resolution
4 of that and if we fail, I guess we'll have to come back to the
5 Court and this --

6 THE COURT: That's the site that engendered several
7 confirmation objections if I recall --

8 MR. JONES: Correct.

9 THE COURT: -- in Onondaga County's, actually sending
10 Onondaga's County attorney to argue, if I recall.

11 MR. JONES: That is correct, Your Honor. And that
12 same site is also open on the EPA side and it's really the EPA
13 claim issues that have engendered most controversy involving a
14 county more than the natural resource damage piece. But both
15 the EPA and the natural resource damage elements of Onondaga
16 remain open and we are working hard on trying to achieve a
17 resolution. As perhaps that degree of interest suggests, it's
18 a complicated and difficult site to resolve, but we're working.

19 On the EPA side, there are only two other sites that
20 remain unresolved, one is called Diamond Alkali in New Jersey.
21 That's what Your Honor referred to as the Passaic River site.

22 THE COURT: Oh, the last one I approved doesn't -- I
23 thought that covered the Passaic River in part.

24 MR. JONES: Sorry, Your Honor, it -- what Your Honor
25 just approved is --

1 THE COURT: I come from New Jersey and the Passaic
2 River is infamous.

3 MR. JONES: As the federal government, I don't think
4 I should use the word infamous to describe any body of water in
5 this great nation, Your Honor. But the settlement Your Honor
6 approved --

7 THE COURT: Let me say that I'm sympathetic to your
8 desires to clean it up; is that better?

9 MR. JONES: Fair enough. So, are we. Yeah, let me
10 be clear. Again, there's both EPA and NRD, Natural Resource
11 Damage claims. The EPA piece is unresolved. So what Your
12 Honor just approved was the Natural Resource Damage claim piece
13 for Interior and NOAA but the EPA piece remains unresolved.
14 And finally, the EPA piece resolves -- it remains unresolved at
15 a site called Hayford Bridge (ph.).

16 So we're trying to close gaps on those remaining
17 issues but other than that, I believe the environmental piece
18 of the case is done with this settlement.

19 A specific request I would make, Your Honor, is that
20 just as a formality, that the Court check and confirm that no
21 one is objecting to this consent decree that was approved by
22 order dated June 17, docket number 10453 because we did notice
23 it for approval today. Nothing has been filed and I'm sure
24 it's unopposed but just to make sure.

25 THE COURT: All right. Is there anybody in the

1 courtroom who wants to be heard on that settlement between the
2 estate and the environmental regulatory authorities?

3 (No response.)

4 THE COURT: The record will reflect no response.
5 Anybody on the phone who wants to be heard on the wisdom of
6 that settlement?

7 MR. HASSON: Your Honor?

8 THE COURT: Yes, sir.

9 MR. HASSON: It's not a question -- this is Mr.
10 Hasson.

11 THE COURT: Yes, Mr. Hasson, go ahead.

12 MR. HASSON: Are we finished with our claims of
13 equity interest?

14 THE COURT: Yes, and I apologize to you, Mr. Hasson.
15 You're free to drop off the call if you want. Let me ask a
16 question before you do, Mr. Hasson. Mr. Smolinsky, am I right
17 that the estate is picking up the cost of the phone-ins for the
18 stockholders who objected?

19 MR. SMOLINSKY: Yes, Your Honor. And to the extent
20 that that's not correct with respect to anyone who didn't know,
21 they could contact me at my offices and I'll arrange for it.
22 But I believe that we made those services available to the
23 individuals.

24 THE COURT: Okay. Mr. Hasson, your having stayed on
25 the call didn't cost you any money but you're free to get of

1 now if you choose to.

2 MR. HASSON: Okay. I do have one more question for
3 you. Can I?

4 THE COURT: Sure.

5 MR. HASSON: All right. So what you've done is
6 you've ruled on it that under the law we are to get nothing; is
7 that correct?

8 THE COURT: In substance; yes.

9 MR. HASSON: And what about my situation with the
10 fraud?

11 THE COURT: The same thing, that's why I talked about
12 510(b).

13 MR. HASSON: Right, the security fraud. Okay. I
14 don't know much about that 510(b). And you said that to appeal
15 the decision, you're going to give us three times the amount of
16 time.

17 THE COURT: Not the time to appeal, but what I am
18 saying is that he's going to -- Mr. Smolinsky or somebody who
19 works for him is going to be drafting up an order for me to
20 review which, in essence, embodies the ruling. When that order
21 is entered, and I told him to take extra time to give you
22 plenty of notice that such an order would be forthcoming. When
23 that order is entered, there's going to be a time prescribed by
24 law for you to appeal if you want to. And as best I recall,
25 that time is fourteen calendar days.

1 MR. HASSON: And we will we be notified to that
2 effect?

3 THE COURT: Yes, sir.

4 MR. HASSON: Okay.

5 THE COURT: Okay.

6 MR. HASSON: All right. I'm going to drop out now.

7 THE COURT: Very well.

8 MR. HASSON: Thank you.

9 THE COURT: All right. Mr. Jones, you may continue.

10 MR. JONES: Thank you, Your Honor. I had very little
11 else but I did want to note for the record that the consent
12 decree refers to a government omnibus environmental proof of
13 claim number of 64064 and that has subsequently been amended to
14 claim number 71118. The stipulation applies fully to the claim
15 as amended. So I just wanted to note that clarification for
16 the record.

17 Subject to that, Your Honor, and with the observation
18 of no objections today, we don't think there's anything further
19 for the Court to do. The order as entered is all we need and
20 we thank the Court for its consideration.

21 THE COURT: All right. Well, obviously nothing has
22 come to my attention that would cause me to change my view that
23 when I signed it. Do you think either -- you don't need to be
24 diplomatic -- for the sake of good order, you would like me to
25 reenter the order or issue some supplemental thing to say I

1 meant it or my thinking hasn't change or whatever?

2 MR. JONES: Your Honor, I think that's unnecessary
3 with the state of the record as it now is, unless if the Court
4 prefers, we're happy to submit a slightly modified proposed
5 order that the Court could --

6 THE COURT: I would prefer not to embarrass myself or
7 the United States Federal Courts by issuing a new order if
8 you're satisfied that the old one skins the cat.

9 MR. JONES: We're satisfied. I consulted internally
10 and was advised to seek the clarifications that we achieved on
11 the record and I think we're set.

12 THE COURT: Fair enough.

13 MR. JONES: Thank you, Your Honor. Oh, and Your
14 Honor, may I be excused for the balance of the hearing?

15 THE COURT: Yes, you may, Mr. Jones. Was somebody
16 speaking to me at the same time Mr. Jones was? I don't hear
17 anything now.

18 Mr. Steinberg?

19 MR. STEINBERG: Yes, Your Honor. I had appeared for
20 the Kidwell matter, is now concluded, I would just like to be
21 excused.

22 THE COURT: Sure.

23 MR. STEINBERG: Thank you, Judge.

24 THE COURT: Just look for ECF. Something will be
25 coming out very quickly.

1 MR. STEINBERG: Thank you.

2 MR. SMOLINSKY: Your Honor, again, Joe Smolinsky.

3 The next matter on the calendar is an application by AP
4 Services for the payment of certain discretionary fees. We did
5 not file that application with the Court but if Your Honor
6 will, I'd like to just present it for approval.

7 THE COURT: Sure.

8 MR. SMOLINSKY: Under this application, AP Services,
9 LLC seeks authorization to pay certain discretionary bonuses
10 under its third amended engagement letter that was approved by
11 this court on September 17, 2010. There are three components
12 to the payments that are all based on milestones that have been
13 achieved under that engagement letter.

14 The first is a seven million dollar payment for
15 achieving the goal of confirming a Chapter 11 plan. There is
16 an additional 2.5 million that is due as a result of
17 distributing seventy percent of the common stock and warrants
18 which were done in the first distribution. I believe we
19 distributed approximately seventy-five percent of the
20 securities at the first distribution date.

21 And the third is based on the total amount of claims
22 at the end of the case. There is a discretionary payment of
23 between 2.5 million and five million dollars that get paid as
24 the claims go down below forty-two billion dollars and then
25 down to the low point of thirty-five billion where they would

1 earn the full five million. To date, they're entitled 2.5
2 million of that payment, so they seek authorization to pay
3 that, as well. Those payments total twelve million dollars.

4 Your Honor, no one in the trenches in this case could
5 disagree with the conclusion that AP Services has acted in a
6 first rate manner with utmost integrity and exemplary in every
7 respect in this case. And personally, I couldn't imagine a
8 better steward for the assets of these estates.

9 The fee examiner filed a statement of no objection
10 with respect to the application, although I guess there was a
11 question as to whether it fell within his jurisdiction but he
12 nevertheless noted that he had no objection.

13 And I believe, Your Honor, although Mr. Masumoto is
14 in the courtroom, that the U.S. Trustee has indicated that it
15 has no objection to the payment of these fees which were
16 approved previously by Your Honor but subject to coming back
17 and seeking now authorization to pay.

18 THE COURT: All right. Mr. Masumoto, do you wish to
19 be heard?

20 MR. MASUMOTO: No, Your Honor. We have no objection.

21 THE COURT: All right. And am I correct that no
22 objections have been expressed by anybody, Mr. Smolinsky?

23 MR. SMOLINSKY: That's correct, Your Honor. There
24 have been no objections.

25 THE COURT: All right. They're approved.

1 MR. SMOLINSKY: Your Honor, items number three and
2 four on the uncontested calendar involve two claims, two series
3 of claims that we're seeking to expunge for breach of the ADR
4 procedures. We do not bring these motions, these objections
5 arbitrarily. We've tried on many times and circumstances to
6 get these claimants to engage in the ADR procedures.

7 And as Your Honor is aware, those ADR procedures have
8 proved very successful in trying to manage the thousands of
9 primarily product liability claims that exist against the
10 estate. We recognize that expungement of the claims for
11 failure to comply with the ADR procedures is a harsh remedy but
12 this should come as no surprise to the claimants.

13 I just want to read into the record from the ADR
14 procedures themselves, that were the subject of several court
15 hearings and this court's approval. Section 4(f) of the -- I'm
16 sorry, Section F of the Procedures called Failure to Comply
17 with the ADR Procedures states:

18 "If a designated claimant or the debtors fail to
19 comply with the ADR procedures, negotiate, in good faith or
20 cooperate as may be necessary to effectuate the ADR procedures,
21 the bankruptcy court may after notice and a hearing, find such
22 conduct to be in violation of the ADR order or with respect to
23 a designated claimant, an abandonment of or failure to
24 prosecute the designated claim or both."

25 "Upon such findings, the bankruptcy court may, among

1 other things, disallow and expunge the designated claim in
2 whole or in part or grant such other and further remedy deemed
3 just and appropriate under the circumstances including without
4 limitation, awarding attorneys fees, other fees and costs to
5 the other party."

6 The first is item number three on the agenda. That's
7 an objection to claim number 1038 filed by the personal
8 representative of Valier Torres Rodriguez. The second is a
9 series of five claims. It's claim number 39218, 39219, 39220,
10 39221 and 39222 filed by Carla Scott, Ryan Hawkins and Barbara
11 Hawkins.

12 In the case of the Rodriguez claims, all efforts to
13 contact counsel have proven to be completely ignored. We left
14 several voicemails without response. In our papers, Your
15 Honor, we listed all of the times that we reached out to them
16 in an effort to try to get them to respond to the initial offer
17 which is the first step in the ADR procedures.

18 After filing this objection, we again called Mr.
19 Pendras (ph.), who is counsel to the claimant and left a
20 message and there was no response.

21 In the case of Scott Hawkins, which is item number
22 four -- the Scott Hawkins claims which is item number four, we
23 had a little bit more response from these claimants but at the
24 end, we scheduled two mediations and at the very last minute,
25 they told us that they didn't want to appear at the mediations.

1 I don't know if this is --

2 THE COURT: Are the Hawkins' pro se or do they have a
3 lawyer?

4 MR. SMOLINSKY: They have a lawyer, Your Honor. Let
5 me just confirm that. Your Honor, the proofs of claim reflect
6 the fact that payments should be made to Gary, Williams, Finney
7 Lewis, Watson & Sperando in Stuart, Florida and they were
8 provided notice, as well.

9 So these are claims that were geared up. Apparently
10 both parties were aware that mediations were scheduled and at
11 the last minute, there was a cancellation and a failure to
12 appear. We don't know what else to do at this point but to
13 seek to expunge the claim. And we've had no response to this
14 objection by those claimants, similar to the representative of
15 Valerie Torres Rodriguez.

16 THE COURT: Let me tell you what's -- and I take it
17 neither of them responded to your motion before me today.

18 MR. SMOLINSKY: That's correct, Your Honor.

19 THE COURT: Let me tell you what's bothering me about
20 this, Mr. Smolinsky. Defaulting in the ADR procedures walks,
21 talks and quacks like malpractice on behalf of a lawyer who
22 should be representing his clients. And because these lawyers
23 did not do something as basic as this, their clients are going
24 to be the ones who are victimized -- don't hold me to the
25 figure but thirty cents on the dollar for whatever you

1 ultimately fix as the claimant's loss is still a lot better
2 than zero. And I am not in a position today, of course, to
3 find that these guys are guilty of malpractice. They're kind
4 of like Potter Stewart and pornography, I know it when I see
5 it. And I cannot understand how any responsible lawyer can do
6 this to his client.

7 But I as a judge am troubled by penalizing the
8 clients for their lawyer's failure to step up to the plate and
9 participate in these procedures. I don't want to understate
10 the importance of them. We couldn't run this Chapter 11 case
11 without the ADR procedures but the clients are going to be the
12 victims, not the lawyers unless we can be creative here in some
13 way.

14 MR. SMOLINSKY: Your Honor, we're prepared to be
15 creative. I want to note that it's not only the lawyers that
16 could potentially be the roadblock here. It might actually be
17 the lawyer's inability to obtain the requisite cooperation from
18 their clients.

19 So I don't know that you can draw that conclusion
20 firmly but what we can do is we can settle the order and we can
21 attach to it a letter and we could serve not only the lawyer's
22 but the claimants and tell them in plain English that a result
23 of this order being entered, they will have no further claims
24 in this case and give a phone number to call prior to a certain
25 date in order to respond if they so choose.

1 Beyond that, I think that we fully and amply provided
2 evidence that we've tried and tried and tried and gave this a
3 lot of patience and cooperation with this court to make sure
4 that we don't enter these orders lightly.

5 THE COURT: Well I'm confident you're not entering it
6 lightly, Mr. Smolinsky. My problem isn't with the way the
7 estate has handled it. It's with the clients who may have been
8 victimized by the way their lawyers were failing to serve them.

9 I am going to go along with your request but I want
10 you to add a paragraph to your proposed order which is that the
11 lawyers for each of these guys are to forthwith call chambers
12 for an on the record conference call at which they will explain
13 to the Judge personally why they failed to comply with the
14 procedures and how they thought they were serving their
15 client's interests by failing to do so. And why the Court
16 should not send a letter to the disciplinary authorities in
17 which they practice law, in the jurisdictions in which they
18 practice law, reporting these circumstances and reporting how
19 their clients were prejudiced by their failure to do what the
20 ADR order required.

21 And forgive me for raising my voice, Mr. Smolinsky.
22 I'm raising it to the wrong guy but this really bothers me and
23 again, I apologize to you or anybody else in the room who was
24 obviously the wrong person to hear this message.

25 MR. SMOLINSKY: Not offended at all, Your Honor.

1 Thank you.

2 THE COURT: All right.

3 MR. SMOLINSKY: Anything else on that matter, Your
4 Honor?

5 THE COURT: No, sir. Thank you.

6 MR. SMOLINSKY: The next matter on the agenda is a --

7 THE COURT: Oh, one last thing, Mr. Smolinsky, put
8 that stuff that I told you to add in bold in the proposed
9 order.

10 MR. SMOLINSKY: And how long would you like for us to
11 settle that order?

12 THE COURT: Whatever you think is fair but perhaps a
13 little extra time might be in order because frankly, I am not
14 looking to impose sanctions. I'm looking to get compliance.

15 MR. SMOLINSKY: And we're not looking to enter orders
16 and then have to vacate them if --

17 THE COURT: Yes, I understand.

18 MR. SMOLINSKY: -- there's an appropriate response.
19 Your Honor, item five on the uncontested agenda is a motion for
20 relief from the stay by the Roman Catholic Dioceses of
21 Pittsburgh and the Transfiguration Parish. We have agreed to
22 lift the stay. We have a stipulation which we will submit to
23 chambers for consideration.

24 THE COURT: Sure.

25 MR. SMOLINSKY: The last matters, Your Honor, are all

1 new omnibus objections. That is items number six through
2 eighteen on the uncontested agenda. We had very few responses
3 with respect to these matters and as usual, we'd like to go
4 ahead and submit an order for those parties who did not respond
5 and we will adjourn to the next hearing those claimants who did
6 file either formal or informal responses.

7 THE COURT: Very well.

8 MR. SMOLINSKY: Your Honor, I believe that concludes
9 the agenda.

10 THE COURT: Okay. Thank you very much.

11 MR. SMOLINSKY: Thank you.

12 THE COURT: Have a good day. We're adjourned.

13 (Whereupon these proceedings were concluded at 11:22 a.m.)
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I N D E X

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C E R T I F I C A T I O N

I, Linda Ferrara, certify that the foregoing transcript is a
true and accurate record of the proceedings.

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